

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 99-0465**  
**RESPONSIBLE OFFICER**  
**SALES TAX and WITHHOLDING TAX**  
**For Tax Period: 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**Issue**

**Sales and Withholding Tax** -Responsible Officer Liability

**Authority:** IC 6-2.5-9-3, IC 6-3-4-8 (f), IC 6-8.1-5-1 (b, IC 6-8.1-10-1.

The taxpayer protests the assessment of responsible officer liability for penalty and interest.

**Statement of Facts**

The penalties and interest were assessed to the taxpayer as a responsible officer. More facts will be provided as necessary.

**Sales and Withholding Tax** - Responsible Officer Liability

**Discussion**

The taxpayer was the responsible officer of a corporation. In 1997, the corporation paid a sales tax liability and a withholding tax liability with checks that were returned due to non-sufficient funds. The Criminal Investigation Division of the Indiana Department of Revenue instituted an investigation of the matter. The criminal investigation was closed after the taxpayer satisfied the

underlying sales and withholding tax liabilities. The penalties and interest attributable to those liabilities were subsequently assessed against the taxpayer as the responsible officer.

The taxpayer does not dispute that he was a responsible officer of the corporation and as such was personally liable for the trust tax liabilities. Nor does he dispute the amount of the penalty and interest. The taxpayer does dispute the assessment of penalty and interest attributable to a trust tax against him as a responsible officer after he satisfied the underlying liabilities.

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the Taxpayer who has the burden of proving that assessment is incorrect. IC 6-8.1-5-1 (b).

The proposed penalty and interest liability attributable to a sales tax liability was issued under authority of IC 6-2.5-9-3 which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed penalty and interest attributable to withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Each of these statutes clearly states that penalties and interest attributable to the particular trust tax can be assessed directly against a taxpayer as a responsible officer.

The taxpayer contends that he understood that the payment of the underlying assessments through the Criminal Investigation Division would satisfy the non-sufficient funds matter as well as the underlying sales and withholding tax liabilities. Those liabilities and the non-sufficient funds matter were satisfied for both criminal and civil purposes. The current assessments against the taxpayer are for the penalties and interest attributable to those underlying assessments. These are civil liabilities which are separate from the criminal investigation carried out by the Indiana Department of Revenue.

On January 28, 1998, the supervisor of the Criminal Investigation Division of the Indiana Department of Revenue sent the taxpayer a letter stating that "restitution of the check does not release you from the statutory obligations that regulate the Indiana Department of Revenue in Civil matters."

The criminal investigation was closed on September 22, 1998 after the filing of an Investigative Summary Report. That report concluded that the "total amount remitted to redeem this check,

along with a check under liability number 97-0038687 was \$2,617.58, penalty and interest connected with both liabilities remain outstanding.”

Even if the Indiana Department of Revenue wished to waive the interest, it would not be able to pursuant to the provisions of IC 6-8.1-10-1.

The taxpayer did not sustain his burden of proving that the assessment is incorrect.

**Finding**

The taxpayer’s protest is denied.